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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 SILVIO HERNANDEZ,) No. CV 08-05956-DDP (VBK)
12)
13) Petitioner,) ORDER (1) ACCEPTING AND ADOPTING
14) v.) THE AMENDED REPORT AND
15) RECOMMENDATION OF THE UNITED
16) STATES MAGISTRATE JUDGE, AND (2)
17) DEBRA DEXTER,) DISMISSING THE PETITION FOR WRIT
18) OF HABEAS CORPUS
19) Respondent.)
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17 Pursuant to 28 U.S.C. §636, the Court has made a de novo review
18 of the Petition for Writ of Habeas Corpus ("Petition"), Respondent's
19 Motion to Dismiss, Petitioner's Opposition, Respondent's Supplemental
20 Brief, Petitioner's Reply to Respondent's Supplemental Brief,
21 Petitioner's Objections to the Report and Recommendation, all of the
22 records herein and the Amended Report and Recommendation of the United
23 States Magistrate Judge ("Amended Report").

24 **IT IS ORDERED** that: (1) the Court accepts and adopts the Amended
25 Report and Recommendation, (2) Respondent's Motion to Dismiss is
26 granted; (3) the Court declines to issue a Certificate of
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1 Appealability ("COA");¹ and (4) Judgment be entered dismissing the
2 Petition with prejudice.

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4 DATED: April 9, 2010



DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE

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15 ¹ Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability
16 may issue "only if the applicant has made a substantial showing of the
17 denial of a constitutional right." Here, the Court has adopted the
18 Magistrate Judge's finding and conclusion that the Petition is time-
19 barred. Thus, the Court's determination of whether a Certificate of
20 Appealability should issue here is governed by the Supreme Court's
21 decision in Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000),
22 where the Supreme Court held that, "[w]hen the district court denies
23 a habeas petition on procedural grounds without reaching the
24 prisoner's underlying constitutional claim, a COA should issue when
25 the prisoner shows, at least, that jurists of reason would find it
26 debatable whether the petition states a valid claim of the denial of
27 a constitutional right and that jurists of reason would find it
28 debatable whether the district court was correct in its procedural
ruling." 529 U.S. at 484. As the Supreme Court further explained:

"Section 2253 mandates that both showings be made before the
court of appeals may entertain the appeal. Each component
of the § 2253(c) showing is part of a threshold inquiry, and
a court may find that it can dispose of the application in
a fair and prompt manner if it proceeds first to resolve the
issue whose answer is more apparent from the record and
arguments." Id. at 485.

Here, the Court finds that Petitioner has failed to make the
requisite showing that "jurists of reason would find it debatable
whether the district court was correct in its procedural ruling."